IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1569 OF 2005

Shafiq Ahmed Gulam Mohiudin Khatemiti
since deceased through his legal
representatives:
Smt.Bibi Begum Mard Shafiq
Ahmed Khatimiti & Ors. : Petitioners
(Orig.Defendants)

V/s.

Mohamed Khalid Gulam Dastgir Jalal & Ors. : Respondents
(ORig. Plaintiffs)

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Ms Leena Patil for the petitioners.

Mr.A.B.Tanjne i/b. Mr.G.S.Godbole for respondent no.9.

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CORAM : S.A.BOBDE, J.

DATE : JULY 27, 2007.

P.C.

1. Rule, returnable forthwith.

Heard by consent.

2. The petitioners-defendants have challenged the order of the trial Court permitting an application under Order 1 Rule 10 of the Code of Civil Procedure by which the

plaintiffs have been allowed to join the subsequent purchasers to the suit.

3. Pending the suit, the plaintiffs sold the property to the newly added plaintiffs. They then applied for joining the purchasers as plaintiffs under Order I Rule 10 of the C.P.C. That has been allowed.

4. Ms Patil, the learned counsel for the petitioners, contended that the trial Court ought not to have allowed the application for joinder on the ground of the subsequent purchasers to purchase the property in contravention of section 53 of the Transfer of Property Act, 1882. She relies on a judgement of the Supreme Court in Bibi Zubaida Khatoon v. Nabi Hassan Saheb [(2004) 1 SCC 191]. That judgement does not help the petitioners' case. The Supreme Court has observed that normally a joinder based on transfer pendente lite is permitted to enable the transferee to protect his interest. It was only in the facts of that case that Their Lordships held that the trial Court rightly rejected impleadment of transferee pendente lite. The transfer had been made after the suit was long pending and the alienation, prima facie, did not appear to be bona fide. In the present case, the suit has been pending from 1987. The newly added plaintiffs have purchased the property in the year

2004 and they have been joined soon after the purchase.

5. Having regard to the circumstances of the case, the impugned order cannot be said to suffer from any error of law apparent on the face of the record and deserves no interference.

6. The rule is discharged.

S.A. BOBDE, J.